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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 372392

IN THE MATTER OF:
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

DEBTOR.

WALTER E. MEYER,

Petitioner,

vs.

JOSEPH B. FLEMING AND AARON COLNON, AS TRUSTEES OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported at 149 Fed. (2) 529, Advance Sheet of August 6, 1945. The opinion likewise appears at pages 61-65 of the Transcript of Record; the judgment, entered June 6, 1945, appears at page 66 thereof.

The Jurisdiction of This Court.

For the reasons particularly stated in the subsequent argument, respondents contend that petitioner has presented no ground for the exercise of jurisdiction by this Court.

Statement of the Case.

Petitioner filed, on April 26, 1934, a proof of claim against The Chicago, Rock Island and Pacific Railway Company "as a stockholder of St. Louis Southwestern Railway Company in behalf of St. Louis Southwestern Railway Company". (R. 2-7.) The gravamen of the claim is that The Chicago, Rock Island and Pacific Railway Company (hereinafter referred to as the "Rock Island") participated in a conspiracy with Edwin Gould and certain stockholders of St. Louis Southwestern "whose identity is unknown to deponent" (petitioner); these conspirators, through control of St. Louis Southwestern stock ownership, joined with other conspirators, and through their stock ownership controlled St. Louis Southwestern in the interest of the conspirators and without regard to the interests of St. Louis Southwestern and its stockholders. The damages are claimed in the aggregate amount of $31,593,874.

Respondents filed their objection to allowance of claim. (R. 7, 8, 9, 10.) One of the objections (R. 8) was that the St. Louis Southwestern filed its petition for reorganization under Section 77 of the Bankruptcy Act in the U. S. District Court for the Eastern Division of Missouri on September 12, 1935, and that on January 4, 1936, the court appointed a trustee; that the effect of this action was to vest in the trustee all causes of action vested in or belonging to St. Louis Southwestern, and that by reason thereof,

the claimant, Walter E. Meyer, could no longer maintain or assert his claim in the Rock Island proceeding. This objection, among others, was sustained by the Special Master. (R. 34-44, also 44-47.) Thereafter, the court heard claimant's objections to the Special Master's reports, and by order entered February 7, 1944 approved the same and disallowed the claim. The court specifically found that claimant had no right to prosecute the cause of action set forth in the proof of claim on the ground that under the provisions of the Bankruptcy Act all rights of action on behalf of the debtor corporation are vested in the trustee, subject to control of the bankruptcy court. (R. 49-52.)

The Circuit Court of Appeals held that where a stockholder sues to enforce a cause of action in favor of the corporation arising from failure of the directors of the corporation to perform their duty in that behalf, and a trustee in bankruptcy is appointed by a court of competent jurisdiction, the right to enforce a cause of action and all other rights of property of the debtor corporation vest in the trustee, and the trustee alone is the proper party to maintain suits for recovery of money due the debtor corporation.

SUMMARY OF THE ARGUMENT.

I.

The provisions of Section 77(a), 77(c)(2) and 77(c)(9) are plain and unambiguous. The decision of the Circuit Court of Appeals gave proper effect thereto and there is no occasion for a reconsideration by this Court.

II.

The decision of the Circuit Court of Appeals is not in conflict with applicable decisions of this Court.

III.

The decision of the Circuit Court of Appeals is not in conflict with decisions of other Circuit Courts of Appeal on the same subject matter.

IV.

Petitioner's "special reason" why the decision should be reversed, *i. e.*, that the claim constitutes a *valuable asset* of St. Louis Southwestern is not valid for the reason that the matters set forth in the claim have heretofore been examined by the Interstate Commerce Commission and by the District Court in the St. Louis Southwestern bankruptcy proceedings and found to be without merit. The results of those examinations are found in *St. Louis Southwestern Railway Company Reorganization*, 249 I. C. C. 5, at pp. 46-149, and 252 I. C. C. 325, at pp. 330-338; and *In Re St. Louis Southwestern Railway Company*, 53 Fed. Supp. 914, at pp. 924-927.

ARGUMENT.

I.

The Provisions of Section 77(a), 77(c)(2) and 77(c)(9) Are Plain and Unambiguous. The Decision of the Circuit Court of Appeals Gave Proper Effect Thereto and There Is No Occasion for a Reconsideration by This Court.

As pointed out by this Court in *Continental Bank* v. *Rock Island Railway*, 294 U. S. 648, Section 77 was another advanced step in the direction of liberalizing the law on the subject of bankruptcies; it added railroad corporations to the category of those who might have relief by legislation enacted under the bankruptcy clause of the Constitution. We must presume that the new statute on a subject-matter both novel and important was carefully drafted and that its clearly expressed provisions mean what they say. Hence, when Congress provided that the Court "shall have exclusive jurisdiction of the debtor and its property wherever located" and that the trustee or trustees "shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of the trustee appointed pursuant to Section 72 or any other section of this title" it meant what that language plainly imports. If St. Louis Southwestern had a cause of action for damages against alleged conspirators prior to the filing of its petition under Section 77, the cause of action was an asset of that company; and upon filing and approval of the petition that asset, like all other assets of the debtor, passed under the exclusive jurisdiction of the court; and when a trustee was appointed, title to that asset, along with all other assets,

became vested in the trustee subject to the control of the judge. How can the court's jurisdiction (power) be exclusive if it can be exercised in whole or in part by a stockholder? Petitioner's arguments, based on convenience or desirability of independent action by a stockholder and without the knowledge or consent of the bankruptcy court, should be addressed to Congress. The courts, taking the statute as they find it, cannot ignore the exclusive power which Congress has conferred. It must be assumed that the bankruptcy court will do its duty, especially having in mind the provision of 77(c)(9):

> "(9) The judge shall direct the trustee or trustees, and may request the Commission through such of its agencies as it may designate, to report to him any facts pertaining to irregularities, fraud, misconduct, or mismanagement, as a consequence of which the debtor may have a cause of action arising therefrom against any person or corporation."

It appears that the court in the *St. Louis Southwestern* case entered an order on February 24, 1936, in response to the above-quoted provision and that the trustee thereafter filed his report in compliance with said order. *In Re St. Louis Southwestern Ry. Co.*, 53 Fed. 914, 926. In his report herein, the Special Master found that the District Court of Missouri had not authorized petitioner to prosecute the claim, nor has that court or its trustee adopted the claim. (R. 36.) Petitioner accordingly is driven to the position that his right to prosecute the claim is unimpaired because "said trustee had made no step whatsoever to take over the claim or to enjoin its prosecution by petitioner." We submit that the trustee's inaction conferred no right upon petitioner nor allowed him to appropriate any of the court's exclusive jurisdiction.

Petitioner cites cases for his proposition that a stockholder is not precluded from continuing to prosecute a cause

of action on behalf of his corporation by reason of the subsequent filing of a petition by, and the appointment of a trustee for, his railroad, where said trustee neither takes over or restrains the prosecution of the claim. These cases were considered by the Circuit Court of Appeals, which examined them all and discussed some of them at length. It found them all either inapplicable or distinguishable on the facts.

Petitioner argues that 77(l) has an effect of some kind upon the "exclusive jurisdiction" provisions of subsection (a):

> "(l) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

We are unable to perceive how subsection (l) in any wise affects the provisions of subsection (a), even though it were admitted (which we do not) that petitioner's right to prosecute a stockholder's derivative action in favor of his corporation prior to the filing of its petition was a right "with respect to the debtor and its property". It is not the *petitioner's* right that was being pursued by him, but the right of the corporation on whose behalf he purported to act.

We call this Court's attention to Section 57 of the Bankruptcy Act as amended June 22, 1938 (c. 575, sec. 1, 52 Stat. 866, 11 U. S. C. A., sec. 93), par. (m) of which is as follows:

> "(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved and filed by the receiver or trustee and al-

lowed by the court in the same manner and upon like terms as the claims of other creditors."

It would be unnecessary for Congress expressly to confer the privilege on a receiver or trustee if the rest of the world, including stockholders of the debtor whose estate is being thus administered, had such privilege without congressional sanction. What it means, therefore, is that the privilege conferred upon the receiver or trustee of the estate is exclusive.

We call this Court's attention to the order entered by District Judge Moore in the St. Louis Southwestern proceeding on February 28, 1944, a copy of which, under certificate, has been filed with this Court by respondents; the text of the order is set forth as Appendix A hereto. That order was entered upon the oral motion of petitioner herein for an order on the Trustee of St. Louis Southwestern to show cause why an order should not be made permitting petitioner to prosecute his claim against The Chicago, Rock Island and Pacific Railway Company, theretofore filed in the Rock Island reorganization proceedings. Petitioner's said motion was filed after the entry on February 7, 1944 of the order of the District Court in the Rock Island proceedings disallowing the claim. After the appeal herein was perfected, respondents filed their motion in the Circuit Court of Appeals asking leave to supplement the record by making Judge Moore's order a part thereof; the Circuit Court of Appeals did not pass on this motion.

Petitioner's contention to this Court is that he "is not precluded from continuing to prosecute the claim by reason of the subsequent reorganization proceedings of his railroad and the appointment of a trustee therein, there being no action on the part of that trustee to take over or restrain the prosecution of the claim." Nowhere in his petition or brief does he mention Judge Moore's order

denying him permission to prosecute his claim. Certainly, by virtue of Judge Moore's order there is more to the situation than merely the appointment of a trustee for St. Louis Southwestern and non-action by that Trustee to take over or restrain the prosecution of the claim.

Finally, petitioner urges that the decision of the Circuit Court of Appeals is erroneous because:

> "The special reason why a reversal of the decision is important to security holders of many railroads now in reorganization arises out of the fact that one of the purposes of the enactment of Section 77 was to do away with the abuses of receivership proceedings by which too often those legally liable for wrecking the railroads escaped all liability. The decision here in tends to continue such evil. (P. 6; see also p. 24.)

Section 77 was undoubtedly intended to cure certain recognized abuses in the old form of equity receivership proceedings. Section 77 made changes of a fundamental and radically progressive nature. *Continental Bank v. Rock Island Railway*, 294 U. S. 648. An additional trustee who had no prior affiliation with the debtor is required where any trustee is appointed who within one year prior thereto has been an officer, director or employe of the debtor corporation; appointment of any trustee or trustees must be ratified by the Interstate Commerce Commission, and the maximum limits of a trustee's compensation must be approved by the Commission; the judge is required to direct the trustee to reports facts concerning irregularities, fraud, misconduct or mismanagement as a consequence of which the debtor may have a cause of action against any person or corporation; any plan of reorganization must be approved by the Commission, and if dissatisfied with any of the plans presented, the Commission may formulate its own. But according to petitioner, these elaborate provisions and safeguards are incomplete and fail of their

purpose; the "abuses of receivership proceedings" will continue to exist unless individual stockholders are permitted to proceed *ad libitum* on their sole initiative.

Respondents do not have so poor an opinion of Section 77 or of those who administer it.

II.

The Decision of the Circuit Court of Appeals Is Not in Conflict With Applicable Decisions of This Court.

Petitioner cites just two decisions of this Court in support of his ultimate proposition that he had the right to continue to prosecute the claim herein on behalf of St. Louis Southwestern despite the subsequent reorganization proceedings of that company and the appointment of a trustee therein. These are

Thatcher v. *Rockwell*, 105 U. S. 467,
Johnson v. *Collier*, 222 U. S. 538.

The Circuit Court of Appeals found these cases inapplicable or distinguishable on the facts.

In *Thatcher* v. *Rockwell*, Rockwell, the owner of a chose in action against Thatcher, assigned the claim to third persons. More than four months thereafter, Rockwell filed a petition in bankruptcy. The assignees of the chose in action brought suit thereon against Thatcher in the name of the bankrupt, and in that suit a plea was filed by Thatcher to the effect that Rockwell had been adjudicated a bankrupt and an assignee in bankruptcy appointed "to whom the claim in suit passed under operation of the bankrupt law". This court, by Chief Justice Waite, held:

> "An assignment in bankruptcy only transfers to the assignee such property as the bankrupt had when the petition in bankruptcy was filed. If in point of fact the claim in suit had been transferred by the

> bankrupt more than four months before the proceedings in bankruptcy were begun, the assignee in bankruptcy had no interest whatever in the suit that was pending, because, from the time of the transfer the transferees became entitled to the benefit of any recovery that might be had."

In *Johnson* v. *Collier*, a voluntary petitioner in bankruptcy instituted a suit after the filing of the petition, but before adjudication and before appointment of a trustee, to protect the assets of his estate. The utmost that could be claimed for the applicability of this case is that petitioner's right to maintain his claim in the Rock Island proceeding was unimpaired between December 12, 1935, the date on which the petition of St. Louis Southwestern was filed and approved, and January 3, 1936, the date on which the Court appointed the Trustee.

III.

The Decision of the Circuit Court of Appeals Is Not in Conflict With Decisions of Other Circuit Courts of Appeals on the Same Subject Matter.

In its opinion, the Circuit Court of Appeals discussed *In Re Prudence Bonds Corporation*, 75 Fed. (2) 262. That case is an authority against rather than for petitioner's proposition in that it holds that the reorganization court properly stayed the prosecution by a bondholder of his suit against the trustee of the indenture. The appellate court stated that the stay order was merely ancillary and added:

> "Thus we need not rely upon the general grant of jurisdiction over all the bankrupt's property in subdivision (a); although perhaps that, too, would be alone enough."

Thompson v. *Terminal Shares*, 104 Fed. (2) 1 simply holds that the bankruptcy court could not adjudicate in a

summary proceeding a claim asserted by the bankruptcy trustee against owners of property against which the claim was asserted, but that the trustee must resort to a plenary action. That case has no bearing here.

In *M-K-T Trust Co.* v. *German Nat. Bank*, 77 Fed. 117, the Bank, as obligee of fidelity bond, brought suit against the Trust Company and the surety. At the trial, the defendants asked to have the receiver of the Bank, appointed subsequent to the institution of the suit, substituted as plaintiff. The motion was denied. The appellate court said that the motion ought to have been allowed, if made at the instance of the receiver, but that the denial constituted no ground for the reversal of the judgment because the denial did not prejudice the rights of the defendant Trust Company.

Boston Elevated Railway Co. v. *Paul Boynton Co.*, 211 Fed. 812. This was a suit by a tenant for wrongful entry upon and eviction of plaintiff from the leased premises. After suit begun, a receiver was appointed to take possession of all of plaintiff's property and rights of action. The receiver did not ask to intervene in the wrongful detainer suit nor had the defendant moved to have him substituted as plaintiff. All that the appellate court decided on this point was that "We cannot hold the refusal prejudicial error".

Blue Grass Canning Co. v. *Steward*, 175 Fed. 537. Action for damages by the Canning Co. as vendee for breach of contract for the sale of cans. Some of the cans were shipped but refused by the vendee which thereupon attached them in the hands of the railroad carrier, and the action for damages begun. Pending the suit, the Canning Co. was adjudicated a bankrupt. The court allowed the suit to continue in the name of the bankrupt upon the execution of an indemnity bond by one Gunther, a surety

upon the attachment bond. A motion to dismiss the suit because of the plaintiff's bankruptcy was denied. This was on the ground that "The surety upon the attachment bond had a direct interest in the successful prosecution of the suit, and if he was willing to indemnify the bankrupt, was properly allowed to go on with the case for his own protection."

In *United States* v. *Tacoma Oriental S. S. Co.*, 86 Fed. (2) 363, the Steamship Co. was undergoing reorganization under Section 77(b) in the U. S. District Court for the Western District of Washington. The debtor filed a petition in the bankruptcy court alleging sums due it from the United States under contracts for carrying the mails; that it needed this money in order to continue in business but that the Comptroller General of the United States, at the instance of the Shipping Board, was refusing to pay by reason of certain alleged set-offs. An order to show cause was entered against the United States, the Comptroller General, the Secretary of Commerce, the Secretary of the Treasury and the Director of the U. S. Shipping Board. These respondents, all residents of the District of Columbia, challenged the jurisdiction of the court. The appellate Court held that "the act gives no jurisdiction to the trial court to issue its process outside its district in proceedings purely in personam, in which no protection of the debtor's res is involved." This decision states no more than the familiar principle that claims of the debtor against third persons must be enforced by a plenary action in a court of proper jurisdiction over the defendants. The statement quoted in the opinion from *In Re Prudence Bonds Corp., supra*, that Congress did not intend the bankruptcy court in proceedings under Section 77(b) *to take over all litigation* between the debtor and third persons simply means that

the bankruptcy court does not have jurisdiction in summary proceedings, but that defendants, claiming in good faith and under color of title, are entitled to the benefit of federal statutes relating to venue of suits. The Steamship Co. should have sought relief in the courts of the District of Columbia. But the court did not even intimate that a suit in the District could be brought by any one other than the debtor or its trustee. The statement that Congress did not intend the bankruptcy court "to take over all litigation between the debtor and third persons" does not mean that a certain residue of litigation could be conducted by outsiders, but simply that some litigation is left to be conducted by plenary suit in courts of proper jurisdiction where the defendants reside.

Paradise v. Vogtlandische, etc., 99 Fed. (2) 53 was a patent infringement suit against Paradise. Trustees in bankruptcy for plaintiffs were appointed during the pendency of the proceedings; defendants claimed that the suits abated because the trustees were indispensable parties and were not joined. The appellate court held that this contention was without merit because the bankruptcy of the plaintiff in a pending action did not abate the suit and that "If the trustees decline or fail to prosecute the action, the *bankrupt* may continue its prosecution to judgment." Whether a *stockholder* of the bankrupt corporation could prosecute the suit, in the event that neither the corporation nor its trustee did so, was not presented.

Hartford, etc., Co. v. Federal Bond & Mortgage Co., 59 Fed. (2) 950. Suit on a surety bond given by appellant to appellee, as mortgage trustee, to protect the bondholders from mechanic's liens on the mortgaged property. While the action was pending, a receiver was appointed for the Bond & Mortgage Company; appellant moved to abate the action in case the receiver did not intervene.

The motion was denied. The appellate court held this was not error because the ground of the motion, i. e., that appellant might be subjected to another suit on the same cause of action, was not well taken because there was no possible danger in that respect.

All of the foregoing cases are inapplicable here; none of them involved any such right as this petitioner asserts.

IV.

Petitioner's "Special Reason" Why the Decision Should Be Reversed, i. e., That the Claim Constitutes a Valuable Asset of St. Louis Southwestern Is Not Valid for the Reason That the Matters Set Forth in the Claim Have Heretofore Been Examined by the Interstate Commerce Commission and by the District Court in the St. Louis Southwestern Bankruptcy Proceedings and Found to Be Without Merit. The Results of Those Examinations Are Found in St. Louis Southwestern Railway Company Reorganization, 249 I. C. C. 5, at pp. 46-149, and 252 I. C. C. 325, at pp. 330-338; and In re St. Louis Southwestern Railway Company, 53 Fed. Supp. 914, at pp. 924-927.

At page 6 of the petition it is stated,

> "A reversal of the decision is important to St. Louis Southwestern because the claim constitutes a valuable asset of that company."

And again on page 7:

> "In view of the *meritorious and substantial nature* of the claim, if the decision of the Circuit Court of Appeals herein is allowed to stand it will work a grave injustice to St. Louis Southwestern and to the many thousands of its security holders."

Since petitioner thus injects into the discussion the merits of his claim, respondents are entitled to point out that

after repeated presentation to and consideration by two tribunals, both have pronounced petitioner's contentions to be groundless. In its first report and order in *St. Louis Southwestern Plan of Reorganization*, 249 I. C. C. 5, the Interstate Commerce Commission devoted 104 pages, beginning at page 46, to a meticulous examination of petitioner's allegations. The charges against the Rock Island are dealt with under the heading, "Prior Control of Debtor by Rock Island and Kansas City Southern", beginning at page 61, and again under the heading "Rock Island", beginning on page 92. The Commission refused petitioners' request to make the following finding:

> "1. That the Rock Island controlled the debtor from March 12, 1925 to October 14, 1925, in breach of the fiduciary relationship the Rock Island bore to the debtor in violation of the Clayton Act."

Within the statutory period of 60 days thereafter, the Commission issued its supplemental report, 252 I. C. C. 325, upon various petitions for its modification, including a petition by the instant petitioner, who asked for modification and rehearing, or failing such relief, requested a further investigation of the matters he had alleged. After devoting 8 pages of its supplemental report to these requests, the Commission denied all of them. The plan was duly certified to the District Court in which the reorganization was pending. At the hearing thereon, Mr. Meyer appeared and again urged his oft-repeated charges. It is interesting to note that among other requests he made, was the following:

> "Meyer also asks that the reorganization provide for preservation in the hands of the trustee of the alleged causes of action accruing to debtor. In view of the proceedings already undertaken at Meyer's instance, as outlined *infra*, we deem the request likewise without merit."

In his opinion approving the plan, District Judge Moore made an extensive review of the contentions made by Mr.

Meyer throughout the proceedings. *In Re St. Louis Southwestern Railway Company*, 53 Fed. Supp. 914, at pp. 925, 927. Of particular interest is the Court's reference to its order entered in 1936 pursuant to sub-section (e)(9) of Section 77, which requires the Judge to direct the Trustee to report facts pertaining to irregularities, fraud, misconduct or mismanagement, "as a consequence of which the debtor may have a cause of action arising therefrom against any person or corporation". In compliance with the order, the Trustee made various reports from time to time during the period February 24, 1937 to March 7, 1943. Judge Moore stated:

> "Examination of these reports shows that the trustee's whole efforts along this line were devoted to investigation of Meyer's charges. The Trustee was never able to find any basis for the institution of legal proceedings in behalf of the debtor against any of the parties accused, and we do not understand that Meyer accuses the trustee of any bad faith or lack of diligence in this respect."

And again,

> "We believe that ample opportunity has been afforded to Mr. Meyer by the Commission and by the Court to present evidence in support of his various allegations and objections, and that the time elapsed during the pendency of these proceedings has afforded ample time for him to fully prepare his case. He has not convinced either this Court or the Commission that his charges are well-founded.

Petitioner has made frequent reference to the dissenting opinion of Chairman Eastman, 249 I. C. C. 177. It is misleading to state that Commissioner Eastman dissented upon the matters now under consideration. As to them, he said:

> "Brooding over this succession of events, I think that Meyer has conjured up conspiracies which go beyond the reasonable probabilities of the situation. Nor do I think that he has proved the diversions of traffic which he believed were made, and I doubt

whether, even if they existed, which I do not assert, they are capable of proof. The evidence on this matter, pro and con, is very confusing to me, perhaps because I have not been able to study it with the greatest of care. Traffic is so affected by a multiplicity of conditions, including droughts, floods, and pestilences, the development or exhaustion of oil fields and the like, changes in the centers and flow of commerce, rate changes, the operating and soliciting abilities of managements, and many other factors, that it is very difficult to arrive at positive conclusions that there have been deliberate efforts to retard or failure to promote the movement of traffic over particular routes. It is for this reason that I do not now favor the continuation by the Commission with its own resources of the inquiry into these matters which Meyer has endeavored to carry on, although I regret that such an investigation was not instituted when he first asked for it."

In the light of the extensive investigations made by the Interstate Commerce Commission, a body peculiarly fitted to consider the subject-matter of the charges and to have an informed judgment thereon, and the investigations made by the Trustee of St. Louis Southwestern, it is apparent that petitioner's claim has no possible asset value to the debtor. We submit that respondents should not be put to the time, trouble and expense of a hearing involving a subject which has already been so thoroughly threshed out.

Conclusion.

For the reasons urged, respondents respectfully submit that certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

IN THE

DISTRICT COURT OF THE UNITED STATES

EASTERN DIVISION,

EASTERN JUDICIAL DISTRICT OF MISSOURI.

In the Matter of
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Debtor. } No. 8497.

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD.

ORDER

DENYING ORAL MOTION OF WALTER E. MEYER FOR AN ORDER ON BERRYMAN HENWOOD, TRUSTEE, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, DEBTOR, TO SHOW CAUSE WHY AN ORDER SHOULD NOT BE MADE PERMITTING WALTER E. MEYER TO PROSECUTE A CLAIM FILED BY HIM IN BEHALF OF ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AGAINST THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, IN THE PROCEEDINGS ENTITLED "IN THE MATTER OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, DEBTOR; IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD, NO. 53209."

Oral motion of Walter E. Meyer for an order on Berryman Henwood, Trustee of the property of the Debtor St.

Louis Southwestern Railway Company, to show cause why an order should not be made and entered permitting said Walter E. Meyer to prosecute the claim filed by him in behalf of St. Louis Southwestern Railway Company on or about April 24, 1934, against the Chicago, Rock Island and Pacific Railway Company, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the proceedings entitled "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor; In Proceedings for the Reorganization of a Railroad, No. 53209," being presented to the Court with affidavits in support thereof, and the Court having heard counsel on the said motion, and being fully advised in the premises,

It Is Ordered:

That the said motion of Walter E. Meyer be and the same is hereby denied by the Court.

(signed) GEO. H. MOORE,
District Judge.

Dated February 28, 1944.